# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## CRIMINAL APPEAL No. 2308 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE J.R.VORA**

**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT**
**Versus**
**DILAVARKHAN GAJUMIYA BHATTI & 1**

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**Appearance :**
MR IM PANDYA APP for Appellant
None for Respondents : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE J.R.VORA**

**and**

**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

**Date : 13/06/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE J.R.VORA)**

1. This criminal appeal is preferred under Section 378 of the Criminal Procedure Code by the State against the judgment and order delivered by the learned Special Judge, Fast Track Court No.1, District : Patan on 29th July, 2005 in Old Special Atrocity Case No.42/2002 i.e. New Atrocity Case No.355/2002 whereby both the respondents, herein being accused of said Special Case came to be acquitted by the trial Court for the offences punishable under Sections 323, 504, 506(2) and 114 of the Indian Penal Code as well as for the offences punishable under Section 3(1)(10) of the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The prosecution case as disclosed by the evidence is in brief as under -

That on 5th July, 2001, the incident occurred and a complaint of which was preferred by the complainant – Vankar Dirabhai Somabhai before Sami Police Station on 7th July, 2001. According to the complainant, on 5th July, 2001 at about 6.00 p.m., he had been to his field from his village : Padala, at that time near his field both the accused came and due to enmity, the accused inflicted blows of the stick on the leg of the complainant and gave abuses and gave threat to the complainant to kill. According to the complainant, his family was harassed by them and on account of majority of Muslim population in the village, frequently his family members were being harassed by the accused. Further it is alleged in the

complaint that in the incident, the accused had broken down bandh of the field of Survey No.4. His complaint was registered and investigation was entrusted to P.W.8 – Madhusudhan Nagarlal Trivedi, the then P.S.I of Sami Police Station and he after due investigation, submitted the charge-sheet. The case, thereafter, committed to the Special Court and the learned Special Judge framed charges against both the accused vide Ex.7 on 23rd March, 2005 for the above said offences and each of the two accused pleaded not guilty.

3. The prosecution examined **P.W.1** – Vankar Dhirabhai Somabhai, complainant at Ex.17, who stated that the incident occurred in 2002, near his field. On that day, along with one Balabhai Khanabhai, he was going to his field and accused came with sticks in their hands and both the accused inflicted stick blows on him as well as on Balabhai and by stick blows, the complainant was injured on his

right leg. He stated that the incident occurred on account of previous enmity. He has been cross-examined by the defence.

4. **P.W.2** – Vankar Balabhai Valabhai is examined at Ex.19 and according to him, the incident had occurred before three years at about 3.00 to 4.00 p.m. At that time, he and complainant were going for natural call and incident occurred near the field of the complainant. The complainant was going ahead and he was following the complainant. He noticed that accused were breaking down the bandh of the field of Dhirajbhai. The complainant restrained Alubhai not to break the bandh. Therefore, Alubhai inflicted stick blows on both legs of complainant – Dhirajbhai. According to this witness, he intervened and took Dhirajbhai to his house. The witness is cross-examined by the defence.

5. **P.W.3** – Bhikhabhai Mavjibhai Vankar, a panch of scene of offence, is examined at Ex.20, but he has not supported the panchnama fully.

6. **P.W.4** – Meghaji Keshaji Rathod is examined at Ex.22. He is also second panch of panchnama at Ex.21. He has supported the prosecution case, so far as the scene of offence is concerned.

7. **P.W.5** – Rajabsha Mangalsha Fakir is examined at Ex.23, who is a panch of panchnamas at Ex.24 and 25 by which both the accused willfully surrendered the sticks to the police and police seized the sticks in the above said panchnamas. However, P.W.5 – Rajabsha did not support the prosecution case.

8. **P.W.6** – Ishakbhai Latifbhai Saiyed is examined at Ex.26, who is a second panch of panchnamas at Ex.24 and 25, but this witness has also not supported the prosecution.

9. **P.W.7** – Rajusinh Gobarsinh Rathod is examined at Ex.27, who was the then P.S.O. incharge of Police Station and according to him, while he was incharge of Police Station, on 6th July,2001 at about 18.30 hours, complainant

offered his complaint which he registered as C.R.No.II-71/2001 and investigation was handed over to P.S.I. Shri Trivedi.

10. **P.W.8** – Madhusudhan Nagarlal Trivedi is examined at Ex.31 and he stated that he recorded the statements of the complainant and witnesses and, thereafter arrested the accused and drawn the panchnama. He also submitted the charge-sheet. This is all the evidence of the prosecution and, thereafter, the learned trial Judge recorded the statements of the accused under Section 313 of the Criminal Procedure Code and defense of both the accused was of total denial in the said further statements. After hearing both the sides, the learned trial Judge came to the conclusion that the prosecution failed to establish the guilt of the accused beyond doubt and hence, the trial Court acquitted the accused of the charges levelled against them and hence this appeal.

11. Learned APP Mr.I.M.Pandya for the appellant

– State has vehemently urged that there are two witnesses to the incident and they are complainant - Dhirabhai and P.W.2 – Balabhai. He submitted that there was no reason to disbelieve these witnesses and contradictions referred by the learned trial Judge are minor contradictions and the learned trial Judge erred in appreciating the evidence and acquitted the accused. Learned APP submitted that the case requires consideration and, therefore, appeal be admitted.

12. We have called for Record & Proceedings from the trial Court and we have gone through the Record & Proceedings carefully. Learned APP has provided extra copies of the evidence and documents to us. We have considered the evidence recorded during the trial independently and dispassionately. We have appreciated the evidence with reference to reasonable and broad probabilities of the case. We have at this stage, examined each corner of the case irrespective of

appreciation undertaken by the trial Court and have reached to our independent conclusion.

13. We have found that the whole case hinges upon evidence of two witnesses i.e. P.W.1 – Vankar Dhirabhai Somabhai and P.W.2 – Vankar Balabhai Valabhai, who alleged to be the eye witnesses. It is found that P.W.2 – Vankar Balabhai Valabhai is related witness of the complaint, as admitted by the complainant in his cross-examination. We have noticed that there are contradictions in the depositions of P.W.1 – Vankar Dhirabhai Somabhai and P.W.2 – Vankar Balabhai Valabhai. There is major contradictions about the time of occurrence of the incident. According to the complainant - Vankar Dhirabhai Somabhai, the incident occurred after 6.00 p.m., while P.W.2 – Vankar Balabhai Valabhai stated that the incident occurred after 4.00 p.m. P.W.1 – Vankar Dhirabhai Somabhai stated that he was going to his field, while P.W.2 – Vankar

Balabhai Valabhai stated that both of them were going for natural call. Main contradiction which we find between these two witnesses is in respect of injuries caused to the witnesses. In his deposition, P.W.1 – Vankar Dhirabhai Somabhai stated that he received injuries in his right leg and accused also inflicted the stick blows on the body of Balabhai. While according to Balabhai both the accused inflicted stick blows on Dhirabhai, while he did not state that accused also inflicted injuries to him. It is pertinent to note that from the place of incident at about 5-7 kilometers away village – Sankheshwar is situated as has been disclosed in cross-examination of P.W.1 – Dhirabhai. Primary Health Center is situated at village : Sankheshwar. But no attempt is made by Dhirabhai to obtain any medical treatment if at all any injury was caused by the accused to P.W.1 – Dhirabhai. It appears that, the complaint is filed on 6th July, 2001

i.e. on the next day at 18.00 hours. There is no explanation coming forward from the complainant in this regard, which throws doubt upon the prosecution case. Necessary also it is to note that vide Ex.25 panchnama, though police gave a yadi to the complainant for the medical treatment, complainant did not choose to take any medical treatment and, therefore, there is no medical evidence produced on record. It appears from the cross-examination of P.W.1 – Vankar Dhirabhai Somabhai and P.W.2 – Vankar Balabhai Valabhai, that they stated the place of offence different from each other. According to P.W.1 – Vankar Dhirabhai Somabhai, the incident occurred near his field, while according to P.W.2 – Vankar Balabhai Valabhai, the incident occurred near some other field where accused were attempting to break a bandh of the field for free flow of the water. In the examination-in-cross, P.W.2 – Vankar Balabhai Valabhai admitted that if

the said bandh was not broken, the water could have accumulated in the said field and could have flown on the road. This fact has not been stated by the complainant in his evidence. It is admitted by both the parties that there were previous litigations criminal as well as civil between the parties and, therefore, there was previous enmity. In these circumstances, it clearly appears that the complainant might have attempted to file the complaint because the accused had broken the said bandh for free flow of water. In any case, neither in the complaint nor in deposition of any of the witnesses, no ingredients of offence under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 could be established. The prosecution, therefore, miserably failed to prove the whole incident against the accused and hence, they are rightly acquitted. The trial Court rightly appreciated the evidence on record

and came to the right conclusion of acquittal. This being an appeal against the order of acquittal, unless on scrutiny, in appeal reasons given by the trial Court for acquittal are found perverse, no interference is permitted. We do not find any fault with the reasoning of the trial Court, except the trial court also observed that the investigation was carried out in the breach of mandatory rule under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and by an Officer below the rank of Dy.S.P. and hence, the trial was vitiated. Though we do not subscribe this view of the trial Court and we do not express any opinion in this respect, but on careful scrutiny of the evidence recorded during the trial on facts, we also come to the conclusion that the prosecution failed to prove the case against the accused beyond reasonable doubt. The contradictions amongst the two witnesses goes

to the root of the prosecution and the story as narrated by the complainant becomes improbable. We, therefore, do not find the judgment and order of the trial Court exceptional even at this stage because we have undertaken a complete scrutiny of the case. In the result, the following order is passed.

Leave to appeal is refused. Appeal stands dismissed.

**[J. R. VORA,J.]**

**[BANKIM.N.MEHTA,J.]**

(vijay)